Musicians Union Local 47, American Federation of Musicians, AFL-CIO (American Broadcasting Company, A Division of American Broadcasting Companies, et al.) *and* Camillo Fidelibus. Case 31-CB-3365

March 27, 1981

DECISION AND ORDER

On January 5, 1981, Administrative Law Judge William J. Pannier III issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Musicians Union Local 47, American Federation of Musicians, AFL-CIO, Los Angeles, California, its officers, agents, and representatives, shall take the action set forth in said recommended Order.

[1] We agree with the Administrative Law Judge that the issue of deferral to arbitration is not presented or applicable in this case.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge: This matter was heard by Administrative Law Judge James T. Rasbury in Los Angeles, California, on March 4 and 5, 1980. On October 17, 1979, the Regional Director for Region 31 of the National Labor Relations Board issued a complaint and notice of hearing, based on an unfair labor practice charge filed on July 27, 1979, amended on August 17 and October 15, 1979, alleging violations of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, herein called the Act. Thereafter, Administrative Law Judge Rasbury passed away. The parties agreed to waive a hearing *de novo*, consenting to the transfer of the case to another Administrative Law Judge for preparation and issuance of decision based on the hearing record made before Administrative Law Judge Rasbury. By order dated August 20, 1980, I was designated to prepare and issue a decision on the record as made.

Upon the entire record, together with consideration of the briefs, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

It is undisputed that at all times material, American Broadcasting Companies, Inc., herein called ABC, has been a New York corporation engaged in "the business of radio and television broadcasting, the business of creating, maintaining, and operating radio and television stations, networks, systems, chains, transmission facilities, reception facilities and other businesses and activities related thereto." During the 12-month period prior to commencement of the hearing in this matter, ABC derived gross revenues in excess of $500,000. During that same period, ABC, through its division, American Broadcasting Company,[1] received services valued in excess of $50,000 from A.C. Nielsen Company, in Chicago, Illinois. Inasmuch as this 12-month period embraces the time period during which the unfair labor practices are alleged, in the complaint, to have been committed, *Furusato Hawaii, Ltd.*, 192 NLRB 105 (1971), as well as the date on which the charge in this matter was filed, *Poor Richard's Pub—a California Corporation*, 217 NLRB 102 (1975), and in view of the fact that there is no assertion that ABC's operations during other periods differed substantially from those occurring during the 12-month period prior to commencement of the hearing in this matter, I find that the operations of ABC during the 12-month period prior to commencement of the hearing in this matter are of a sufficient magnitude for the Board to assert jurisdiction. *Raritan Valley Broadcasting Company, Inc.*, 122 NLRB 90 (1958). Therefore, I find that at all times material ABC has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[2]

II. THE LABOR ORGANIZATION INVOLVED

At all times material Musicians Union Local 47, American Federation of Musicians, AFL-CIO, herein called Respondent, has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Findings*

The following findings of fact are either undisputed or were admitted by Respondent's treasurer, Robert Manners:

[1] There is no contention that American Broadcasting Company, a division of ABC, is an entity or employer separate and distinct from ABC, nor has there been any showing that it operates independently of ABC. Cf. *Los Angeles Newspaper Guild, Local 69, et al. (Los Angeles Herald-Examiner Division of the Hearst Corporation)*, 185 NLRB 303 (1970), affd. *per curium* 443 F.2d 1173 (9th Cir. 1971).

[2] In addition to ABC, the General Counsel also alleges that MCA Records, Inc., National Broadcasting Company, Inc., and Ray Ellis Enterprises, Inc., satisfied the Board's discretionary standards for asserting jurisdiction and were employers within the meaning of Sec. 2(2), (6), and (7) of the Act. However, no evidence was introduced during the hearing to support these allegations. Nevertheless, in view of my findings *infra*, it is not material that the General Counsel failed to produce evidence in support of these allegations.

1. By virtue of the terms of various collective-bargaining agreements, checks for services performed by members of Respondent, for employers in the broadcast and entertainment industry, are transmitted to Respondent for delivery to the employees who performed those services.[3]

2. Members of Respondent are obliged to pay dues computed, in essence, on the basis of percentages of contractual pay scales for the types of work that they perform.

3. Although Respondent has a longstanding policy of prohibiting persons other than relatives from picking up members' paychecks sent to it by employers, in practice members have been permitted to designate, by written authorization, nonrelatives as agents for receipt of these checks from Respondent.

During 1979 Camillo Fidelibus had been a music copyist[4] and a member of Respondent. By June 1979, Fidelibus was in arrears in the dues which he owed to Respondent.

5. In July 1978, Fidelibus executed a written authorization designating Josephine Ann Johnson "to receive any checks payable to me and to pay Work Dues thereon." Johnson testified, without contradiction, that he had picked up Fidelibus' checks from Respondent on three or four occasions during 1979, prior to the month of June. In addition, documentary evidence was produced at the hearing, though not introduced, showing that Johnson had picked up a check for Fidelibus from Respondent in March 1979.

6. On June 6, 1979, American Broadcasting Company, a division of ABC, issued a check, in the amount of $135.36 to Fidelibus. This check was transmitted to Respondent.

7. On June 14, 1979, Johnson came to the work dues department in Respondent's Hollywood office and spoke to one of the clerks.[5] When Johnson asked for her own checks and for any that were there for Fidelibus, the clerk brought two checks for Johnson and one from American Broadcasting Company, Division of ABC, for Fidelibus. However, after examining the dues records of Johnson and Fidelibus, the clerk told Johnson, that she "was not allowed to release my checks to me or his checks to me until the back dues . . . were paid." When Johnson protested, asking the clerk to check with a supervisor about withholding the checks, the clerk went to one of the back desks which, according to Johnson, had "in the past been a supervisory desk" and spoke with another woman. The clerk returned and said that the checks could not be released. Johnson then asked the clerk to check with Manners. She observed the clerk walk to Manners' office, observed Manners come out of his office, and observed Manners speak with the clerk. According to Johnson, the clerk "returned to the desk. Took Mr. Fidelibus' check off the desk, popped it back into the file, and said, "Mr. Manners said he could not have his check. I could not release it to you because he owed dues on his card." Johnson paid her own work dues, thereby securing release of her own checks, but did not pay those of Fidelibus. She left without his check.

Johnson testified that later that same day she had returned to Respondent's facility and had spoken personally with Manners. Manners agreed that this had occurred. Johnson testified that during their conversation, Manners had obtained a copy of Fidelibus' work dues card and that Manners had "said that the only problem that he knew of [in getting Fidelibus' check] was that the back work dues had not been paid on the card." Johnson further testified that when, toward the end of their conversation, she had asked if Manners would release Fidelibus' check to her, Manners had replied, "No, tell Fidelibus to pay his card and I will release the check." Manners agreed that there had been an occasion on which he had gotten a copy of Fidelibus' work dues card for Johnson, but he testified that he did not "believe" and did not "recall it being June 14th." He did not, however, deny specifically having made the statements attributed to him by Johnson concerning the relationship between release of Fidelibus' check and payment of his back dues.

Johnson testified that on July 3 she had again gone to the work dues department and had requested any checks that were there for Fidelibus.[6] Johnson was told that Fidelibus' checks would not be released: "They said that they were unable to release them to me. I am not sure whether they said because he was trial boarded or because of non-payment of work dues."[7] According to Johnson she could see that there were four or five checks for Fidelibus.[8]

In late July Fidelibus, himself, went to Respondent's office to secure a postponement of the trial board proceeding date. He spoke with a clerical named Jan, whose last name he did not recall.[9] She suggested that if Fidelibus "went down to Mr. Manners [he] could probably straighten out the whole thing." Instead, Fidelibus went to the work-dues department and asked a clerk[10] for his checks. After checking his file, the clerk returned with zerox copies of Fidelibus' checks and, in response to Fidelibus' query, said that she could not explain why the

[3] Respondent's members also can be paid directly by employers in that industry. The demarcation line between when this happens and when, instead, the checks are sent to Respondent for delivery to its members, is neither clear nor pertinent to resolution of the dispute in this proceeding.

[4] While there appears to have been some dispute as to the particular employers for whom Fidelibus had worked on specific occasions, there is no contention that he had occupied the status of an independent contractor nor that he had been other than an employee throughout 1979. Therefore, I find, that at all times material during 1979 Fidelibus had been an employee within the meaning of Sec. 2(2) of the Act.

[5] While Johnson did not know the name of the clerk, she described her as being "a tall, thin girl with light brown hair and a very narrow chin."

[6] Johnson did not recall the name of the clerk to whom he had spoken initially that day, nor was she able to describe that clerk. However, that clerk's initials, as written on the receipt for Johnson's own checks which she had received that day, were either "F.C." or "D.C."

[7] The trial board is, in essence, an internal dispute resolution procedure established by Respondent to resolve certain types of controversy.

[8] By the time of this conversation, the record discloses that the following checks had been issued and sent to Respondent: a June 8, 1979, check from When The West Was Fun, Inc., a Brad Marks Production; a June 11, 1979, check from Isis Productions, Inc.; a June 20, 1979, check from Elliott Lawrence; a June 22, 1979, check from Ray Ellis Enterprises, Inc.; and a June 28, 1979, check from National Broadcasting Company, Inc.

[9] Respondent did not dispute Fidelibus' testimony that it had employed a clerical named Jan during July.

[10] Fidelibus was unable to either name or describe this clerk.

checks themselves were not there. Fidelibus observed the clerk speaking with another clerk,[11] who said, "Mr. Manners took them and he can't have them."

8. On July 27, 1979, Fidelibus filed a charge in this matter. The return receipt for the copy of the charge that had been sent to Respondent, by certified mail, shows that it had been received on July 31, 1979. By letter dated August 8, 1979, Manners sent to Fidelibus all of his checks from employers that were then in Respondent's possession.[12] Manners' letter advanced no explanation for the delay in having transmitted these checks to Fidelibus. However, the letter did recite the amount of dues then owed by Fidelibus and demanded that Fidelibus pay them.

9. In a letter dated August 7 to the Board agent investigating Fidelibus' charge, Respondent's counsel stated:

> In addition, I informed you that it is the custom and practice of the Union to only release checks to that person to whom said check is made out. Therefore, in accordance with the Union By Laws the Union was not authorized to release the check and/or checks to Joanne Johnson.

This explanation was repeated in a letter, sent 1 week later, to the Board's agent. In that letter, counsel stated:

> Third, the only person authorized to pickup the wage checks is the member of the Union to whom said checks are made out or member of the immediate family for whom an authorization has been signed. This is in accordance with a ruling by the Board of Directors of the Union. (The original ruling was reaffirmed on July 1, 1977.) Therefore, the Union had no authority to release said checks to Joanne Johnson.

However, Johnson denied expressly that anything had been said to her during her June and July conversations with Respondent's clerks, when she had asked for Fidelibus' checks, about Respondent not permitting her to pickup Fidelibus' checks. Moreover, while Manners denied initially that Fidelibus' checks had been withheld because of his unpaid dues, he later testified concerning this matter as follows:

> Q. What was the reason that, or reasons, if there were more than one, that the Union held the checks of Mr. Fidelibus between the time period of June of 1979 and August when they released them?
>
> A. Well, the work dues hadn't been paid on them and he personally hadn't even asked for the checks.
>
> Q. Is that the only reason?
>
> A. That is the only one I can think of.
>
> Q. Part of the reason that the checks were withheld was not because Mr. Fidelibus, in your view, had improper authorization on file, that the authorization given to JoAnn Johnson didn't allow her to pick up the checks?
>
> A. In the first instance, it happened because she refused to pay for them and it never got into a discussion about any of it.
>
> Q. Are you stating that the Union's reasons for holding the checks during the time period June of 1979 to part of August, 1979, was not because the authorization that was on file, allowing JoAnn Johnson to pick up checks, was an invalid or improper authorization?
>
> A. I think there was discussion about maybe discontinuing that practice because we had a lot of trouble with it.
>
> Q. My question, Mr. Manners, was are you denying that one of the reasons that the checks were held by the Union was—let me withdraw that. You are not claiming that one of the reasons that the checks were withheld from Mr. Fidelibus during that time period was because the authorization submitted by Mr. Fidelibus to JoAnn Johnson was invalid because she was not a family member?
>
> A. I can't give you any answer to that because the decision was made by the board of directors and I don't know what is on their head—
>
> Q. Do you attend board of director's meetings?
>
> A. But I don't know what they are thinking.
>
> Q. I am not asking you for what they are thinking. As far as you know, was any any [sic] of the explicit reasons given for the withholding of these checks, did it have anything to do with the authorization submitted by Mr. Fidelibus for JoAnn Johnson? Were any of the reasons related to her not being a relative and, therefore, ineligible to pick up his checks?
>
> A. Yes, I believe that was one of them.
>
> Q. When did that become a reason? What board meeting where this was discussed that you became aware of it?
>
> A. The board meeting after the incident.
>
> Q. That was a Tuesday following it?
>
> A. Yes.
>
> Q. So, at the time that the incident occurred with JoAnn Johnson, the authorization that Fidelibus had given to her was not in question. It was only later at the board meeting that it came into question?
>
> A. Yes.
>
> Q. Did you at any time tell JoAnn Johnson or Mr. Fidelibus that the authorization that he had submitted was invalid or would not allow the release of checks to someone other than a relative of Mr. Fidelibus?
>
> A. The answer to that is "no."

10. Fidelibus had not been the only member of Respondent whose paychecks, according to the evidence produced at the hearing, had been withheld pending payment of back dues. As set forth above, when she had sought to obtain Fidelibus' paychecks in June, Johnson had been told that her paychecks, as well, were being withheld until her own back dues had been paid. Music copyist, Dave Oyler, testified that there had been four

[11] Though he was unable to name this clerk, Fidelibus described her as having been "a young girl, in her mid-20's or so."

[12] And in addition to the check described in paragraph 7, *supra*, and the checks described in fn. 8, *supra*, there were also checks dated July 18 and 27, 1979, from Ray Ellis Enterprises, Inc., and a check dated July 11 from MCA, Inc., included with this letter.

occasions when he had been refused his paychecks by Respondent's personnel for dues deficiencies between 1975 and January 12, 1979. Oyler testified that on the latter date, he had spoken to three clerical employees,[13] but that only after paying his dues, both those owing from past paychecks and those owed on the check being held that day, had his paycheck been released.

Composer/conductor/orchestrator John Beal testified that approximately once a year, work-dues department personnel had refused to give him a paycheck until the dues which he owed on those checks had been paid. Beal testified that the last such incident, prior to the hearing, had occurred on December 12 or 13, 1979.[14] On that occasion, his check had not been released to Beal, but it had been later given to him when he had tendered a check to Respondent for the amount of dues owing on it.

Most significantly, by notice dated May 24, 1977, Respondent's work-dues department notified music copyist Joel Wiest that his membership had been suspended, that he owed $31 through February 1977 or $55 for all of 1977 to reinstate his membership, and that "As soon as your membership is reinstated, we will forward your checks to you." When Wiest then pursued the matter through the California Division of Labor Standards Enforcement, Respondent had returned his paychecks to the employers who had issued them on the basis of a June decision of its board of directors "not to service Joel Wiest until he pays his membership dues."[15]

11. At a meeting of Respondent's board of directors on January 15, 1980, a motion was passed. The substance of that motion was recited in a notice, dated January 16, 1980, posted on all of the windows at Respondent's work-dues department and published in Respondent's newspaper, Overature. The substance of the notice reads:

> Moved and seconded whereas all work dues are due and payable when any or all checks are picked up at the Work Dues Department, therefore be it resolved that the Treasurer be instructed to require his staff to refer all non-payment of work dues immediately to the Trial Board, including work dues on pay-directs.

B. *Conclusions*

1. The General Counsel alleges that between June 14 and August 8, 1979, Respondent had refused to release Fidelibus' paychecks to him until he had paid all dues which he owed as a member of Respondent. Respondent's primary argument, in response to this allegation, is that Fidelibus never had made a proper demand for his paychecks, having made his request through a nonrelative, Johnson, who was not eligible to receive his paychecks under Respondent's policy of not releasing paychecks to nonrelatives. However, the undisputed evidence and objective considerations do not support Respondent's argument, but rather establish that Fidelibus' paychecks had been withheld, during that approximately 2-month period, because of his nonpayment of dues.

First, Johnson testified, without dispute, that nothing had been said to her on June 14 nor on July 3, 1979, regarding any policy concerning nonrelatives picking up paychecks. Indeed, her testimony is undisputed that earlier in 1979 she had picked up paychecks for Fidelibus without protest by work-dues department personnel. Moreover, the authorization, signed by Fidelibus, for her to do so was produced at the hearing. So far as the record discloses, Respondent had voiced no objection to Fidelibus, at the time that he had executed that authorization, concerning permitting Johnson, a nonrelative, to pick up his paychecks. Yet, had Respondent been observing its stated policy, it seems unlikely that it would have accepted such an authorization from Fidelibus at the time that he executed it. Furthermore, there is no evidence that any mention had been made of Johnson's nonrelative status until after the charge had been filed against Respondent. In these circumstances the conclusion is warranted that, notwithstanding its policy, Respondent had been following the practice of allowing nonrelatives to pick up members' paychecks so long as, at least, there had been written authorizations, signed by the members, permitting nonrelatives to do so. Consequently, this defense, regarding Johnson's nonrelative status, is no more than an afterthought, advanced following the filing of the charge to conceal the true reason for the refusal to tender Fidelibus' paychecks between June 14 and August 8, 1979.

Second, Johnson testified that she had been told, at several points during her conversations in June and July—once by Manners himself, that Fidelibus' checks could be picked up only after his dues arrearages had been paid. As pointed out in paragraph 7, *supra*, Manners did not deny specifically having told Johnson that Fidelibus' failure to maintain currency in his dues had been the cause of her not being able to get his checks. Johnson identified most of the work-dues personnel to whom she had spoken, either by means of physical descriptions or through the initials of the name of one of them. Respondent did not deny that persons corresponding to

[13] Oyler described the first clerical to whom he had spoken as having been a 5-foot, 6-inch woman, in her early twenties, with long black hair and "sort of an American/Oriental type of a look." He described the other two clericals as having been supervisors. One of them, he testified, had been named Butler and had been employed in the work-dues department as recently as a few days prior to commencement of the hearing. He further testified that the other supervisory clerical employee was no longer employed by Respondent, but described her as having been approximately 5-feet 6-inches tall, somewhat overweight, and approximately 35 years of age. Respondent did not deny having employed a work-dues department employee named Butler. Nor did it deny having employed two other clerical employees whose appearances correspond to Oyler's descriptions.

[14] Although Beal was unable to identify by name the two clerical employees to whom he had spoken that day, he described one of them as having been a "black lady in, I would estimate, her late 30's" who was approximately 5 feet 7 inches tall and of medium build. Respondent did not deny having employed such an individual in its work-dues department in December 1979.

[15] Although Beal, Oyler, Wiest, and Fidelibus had each signed an authorization for their employers to checkoff their dues and transmit them directly to Respondent, apparently none of the employers had, in fact, ever submitted separate checks to Respondent for the amounts of dues owed by these employees. By contrast, the record discloses that each of the employers did send separate payments to Respondent for the contractually required pension and health and welfare payments. There is no basis for concluding that a similar course of action could not have been pursued with respect to the dues that were to be checked off. Thus, the existence of signed checkoff authorization does not afford Respondent a defense to its conduct.

these identifications had been employed by it. Yet, it neither called, nor advanced any explanation for failing to call, any of them as witnesses to deny the remarks attributed to them by Johnson. Its failure to do so gives rise to an inference that had they been called, their accounts of their remarks to Johnson would not have been favorable to Respondent. *Colorflo Decorator Products, Inc.*, 228 NLRB 408, 410 (1977), enfd. by memorandum opinion 582 F.2d 1289 (9th Cir. 1978).

Third, the descriptions given by Oyler, Beal and Wiest, concerning the withholding of their paychecks until their dues obligations to Respondent have been satisfied, all tend to confirm Johnson's account that she had been denied Fidelibus' paychecks until his back dues had been paid. Moreover, in the final analysis, the testimony of Manners, reproduced in paragraph 9, *supra*, tends to confirm her account as well. For, as he finally conceded, in June and July, it had not been propriety of the authorization of Johnson to pick up Fidelibus' paychecks that had been "in question." Rather, the only matter that had been of concern had been Fidelibus' dues deficiency.

Therefore, I find that a preponderance of the evidence supports the conclusion that Respondent had held Fidelibus' paychecks between June 14 and August 8, 1979, because he had failed to satisfy the dues obligation owing to Respondent by virtue of his membership.

2. The General Counsel alleges that the withholding of Fidelibus' paychecks until he paid his membership dues constituted a violation of Section 8(b)(1)(A) and (2) of the Act. Respondent disputes that allegation. Yet, receiving payment for one's labor is both a term and a condition of employment. "Indeed, we are hard pressed to think of a matter of more vital concern to employees than that involved herein—receiving payment for one's labor." *Air Surrey Corporation*, 229 NLRB 1064 (1977). One of the purposes of the Act is to keep separate employment rights, such as the right to receive a paycheck, from membership obligations owed to labor organizations by employees. "Integral to the policy underlying both Section 8(b)(1)(A) and (2) of the Act was the intent to separate membership obligations owed by employees to their labor organizations from the employment rights of those employees." *International Longshoremen's and Warehousemen's Union, Local 13 (Pacific Maritime Association)*, 228 NLRB 1383, 1385 (1977), enfd. 581 F.2d 1321 (9th Cir. 1978), and cases cited therein. Thus, while a labor organization is free to seek the discharge of employees who fall behind in their financial obligations to it, that is the sole measure available to it under the Act to enforce the financial obligations of its members. "Nothing in the Act or its legislative history persuades us that the union-shop provisions to Section 8(a)(3) and 8(b)(2) were designed to give employers and unions a license to use various discriminatory devices, short of discharge [to require that employees join or maintain their union membership]." *Krambo Foods Stores, Incorporated, et al.*, 106 NLRB 870, 877 (1953). Here, Respondent has accepted responsibility for serving as a conduit for transmitting some paychecks from employers to employees. Having become involved in this facet of the employment relationship, it is obliged, as are labor organizations operating exclusive hiring halls, to maintain the statutorily mandated separation between employment rights and membership obligations. Therefore, by withholding Fidelibus' paychecks as a lever to extract the membership dues which he owed to it, Respondent violated Section 8(b)(1)(A) and (2) of the Act.

3. Respondent has raised a series of defenses. The first one, alluded to in footnote 2, *supra*, pertains to the General Counsel's failure to adduce evidence showing that MCA Records, Inc., National Broadcasting Company, Inc., and Ray Ellis Enterprises, Inc., have operations of sufficient magnitude to satisfy the legal and discretionary jurisdictional standards. Even according full credence to this defense, the absence of evidence regarding the volume of operations of those three employers does not suffice to deprive the Board of jurisdiction in this matter. As set forth in section I, *supra*, the operations of ABC are of sufficient magnitude to establish Board jurisdiction. Fidelibus' check that was first denied to Johnson on June 14 had been one issued by its division. Accordingly, Respondent's refusal to transmit that paycheck to Fidelibus, through Johnson, suffices, of itself, to establish a violation of Section 8(b)(1)(A) and (2) of the Act. Additional findings regarding each of the succeeding checks, which Respondent refused to transmit to him, would be cumulative. It would not serve to change the substance of the remedy warranted by its refusal to transmit the initial check. Therefore, the General Counsel's failure to produce evidence to overcome Respondent's denial of Board jurisdiction over MCA Records, Inc., National Broadcasting Company, Inc., and Ray Ellis Enterprises, Inc., does not serve to preclude a finding that Respondent violated Section 8(b)(1)(A) and (2) of the Act in this proceeding.[16]

4. Respondent argues that it has internal disputes-resolution procedures and that Fidelibus should be required to exhaust those procedures before the Board is burdened with having to resolve the issue arising from the withholding of his paychecks pending payment of his back dues. In making this assertion, Respondent relies on the doctrine enunciated in *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971). Yet, that doctrine replies to disputes arising under collective-bargaining agreements between unions and employers. It is confined to situations "where disputes turn on collective bargaining agreements . . . ." *Newspaper Guild of Greater Philadelphia, Local 10, et al. [Peerless Publications]* v. *N.L.R.B.*, 636 F.2d 550 (D.C. Cir. 1980). Moreover, there has been no showing here that Fidelibus' dispute with Respondent could have been resolved under the

[16] Nor does the fact that Fidelibus may have been employed by ABC Circle Films, a Division of ABC, when he had performed the services covered by that check. As is true of the Division of ABC that issued the check refused to Johnson on June 14, there has been no showing that ABC Circle Films is an entity separate and distinct from ABC. Moreover, regardless of which entity actually employed Fidelibus, there is, as is pointed out in fn. 4, *supra*, no dispute that, at all times material, he had been an employee within the meaning of Sec. 2(3) of the Act. As expressly stated in that subsection, to satisfy the definition of employee, there need be no showing that an individual is employed by a specific employer. Sec. 2(3) of the Act "includes not only the existing employees of an employer but also, in a generic sense, members of the working class." *John Hancock Mutual Life Insurance Company* v. *N.L.R.B.*, 191 F.2d 483, 485 (D.C. Cir. 1951).

terms of any of the collective-bargaining agreements produced during the course of the hearing. Section 10(a) of the Act provides specifically that the Board's power to prevent unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." The Board has not adopted a policy of deferral for exhaustion of internal disputes resolution procedures between labor organizations and their members. Fidelibus has a statutory right to be free of job interference, save as prescribed by the Act, for disputes between Respondent and him concerning his dues obligations. As pointed in Conclusions of Law 2, *supra*, this is a right which is integral to operation of the Act and one to which he is entitled to protection under the Act. Therefore, "inasmuch as this case involves allegations of [union] interference with an employees' individual basic protected rights under Section 7 of the Act [deferral is not warranted]." *Melones Contractors, A Joint Venture*, 241 NLRB 14 (1979).

5. Respondent further argues that its International body is an indispensable party of this proceeding inasmuch as it "not [Respondent], is signatory to the collective bargaining agreements . . . ." However, there is no allegation that either the terms of those collective-bargaining agreements or the procedure of transmitting checks to labor organizations for distribution to their members constitutes a violation of the Act. Either, the allegation here is confined to the manner in which Respondent—and only Respondent—has chosen to implement that procedure. The evidence does not show that Respondent's International had been a participant in or had been aware of Respondent's manner of implementing that procedure. Congress has made clear that international unions are not to be held liable for the acts of their locals purely on the basis of the relationship between them. See *Carbon Fuel Company* v. *United Mine Workers of America et al.*, 100 S. Ct. 910 (1979). Accordingly, the allegations of the complaint in this matter do not involve Respondent's International. Therefore, it is not an indispensable party.

6. Respondent argues that inasmuch as Fidelibus' checks had been transmitted ultimately to him and in view of the fact that its board of directors had then promulgated a purportedly curative policy, embodied in the notice quoted in findings of fact 11, *supra*, any violation that it may have committed has been remedied and is no more than *de minimis* in nature. However, the substance of the January 1980 notice hardly satisfies the Board's standards for effective repudiation of an unfair labor practice. See discussion, *Douglas Division, The Scott & Fetzer Company*, 228 NLRB 1016, 1024 (1977), and cases cited therein. That notice did not refer to the withholding of Fidelibus' checks. It did not state specifically, or even inferentially, that Respondent would refrain from withholding paychecks as a lever to extract dues payments from its members. It was not published until over 5 months after Fidelibus' checks finally had been transmitted to him. Moreover, as Johnson's experience involving her own paychecks on June 14, set forth in findings of fact 7, *supra*, and as the experiences of other employees, set forth in findings of fact 10, *supra*, demonstrate, Respondent's June 14 conduct with regard to Fidelibus' paycheck had not been unique. Either, Respondent had engaged in similar actions with respect to the paychecks of other employees and over a significantly greater period of time than the 2-month period involving Fidelibus. In these circumstances, there is no basis for concluding that its conduct between June 14 and August 8, 1979, had been isolated and *de minimis*.

7. As part of the remedy for Respondent's violation of the Act, the General Counsel urges that Respondent be ordered to publish the notice in the Overature, Respondent's monthly newspaper. The record shows that Respondent has thousands of members in the Los Angeles, California, area. The population of that area is, of course, disbursed over a broad geographic area. While it has been shown that some members, on some occasions, do come to Respondent's office to pick up paychecks and to pay dues, the record is also clear that a substantial number of paychecks are transmitted directly to Respondent's members by the employers for whom they work. Thus, there is no assurance that any notice posted at Respondent's office would likely, during a 60-day posting period, be observed by even a substantial number of Respondent's members. Moreover, by publication of its own January 15, 1980, board of directors resolution, quoted in findings of fact 11, *supra*, in the Overature, Respondent has shown that it regards publication as the only effective means of assuring communication of its messages to its members. Therefore, I find that publication of the notice in this matter in the Overature is warranted. See, for example, *N.L.R.B.* v. *Union Nacional de Trebajadores [Macal Container Corp.]*, 540 F.2d 1, 11–12 (1st Cir. 1976), cert. denied 429 U.S. 1039; *N.L.R.B.* v. *Crown Laundry & Dry Cleaners*, 437 F.2d 290, 294 (5th Cir. 1971).

Conclusions of Law

1. American Broadcasting Companies, Inc., is an employer within the meaning of Section 2(2), engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Musicians Union Local 47, American Federation of Musicians, AFL–CIO, is a labor organizaton within the meaning of Section 2(5) of the Act.

3. By withholding a paycheck of Camillo Fidelibus between June 14 and August 8, 1979, because he had failed to pay his membership dues, Musicians Union Local 47, American Federation of Musicians, AFL–CIO, has violated Section 8(b)(1)(A) and (2) of the Act.

4. The aforesaid unfair labor practice is one which affects commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Musicians Union Local 47, American Federation of Musicians, AFL–CIO, has engaged in unfair labor practices in violation of the Act, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact and conclusions of law and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[17]

The Respondent, Musicians Union Local 47, American Federation of Musicians, AFL-CIO, Los Angeles, California, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Withholding and refusing to transmit to its members paychecks which it has received from their employers until those members satisfy their membership dues obligations to it.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act:

(a) Post at its office, place of business, and meeting places, copies of the attached notice marked "Appendix."[18] Copies of said notice, on forms provided by the Regional Director of Region 31, shall, after being duly signed by Respondent's representative, be published in six consecutive issues of Overature on the final page of that official publication, which page shall not be encumbered by any other written material. In addition, the duly signed notice shall be mailed to American Broadcasting Companies, Inc. for posting, should it be willing. The duly signed notice shall be posted by Respondent immediately upon receipt thereof and shall be maintained by it for 60 consecutive days, in all places where notices to its members are customarily posted. Reasonable steps shall be taken by it to insure that said notices are not altered, defaced, or covered by any other material.[19]

(b) Notify the Regional Director of Region 31, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[17] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections hereto shall be deemed waived for all purposes.

[18] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[19] *Associated Musicians of Greater New York, Local 802, American Federation of Musicians, AFL-CIO (Huntington Town House, Inc.)*, 225 NLRB 559 (1976).

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT withhold or refuse to transmit your paychecks which we receive from your employers because you have failed to pay fully the dues which you owe us as members.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

MUSICIANS UNION LOCAL 47, AMERICAN FEDERATION OF MUSICIANS, AFL-CIO